IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL COOK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39125

FILED

AUG 20 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to withdraw a guilty plea.

The State jointly charged appellant Daniel Cook and his brother, James, with murder (open) with the use of a deadly weapon for the stabbing killing of Walburga Soult in April 2000.[1] James subsequently agreed to plead guilty to first-degree murder. Shortly thereafter, appellant reached a plea bargain with the State and entered into a written agreement to plead guilty to conspiracy to commit murder and second-degree murder.

Appended to appellant's written plea agreement and incorporated therein was a second amended information which set forth the following:

> That DANIEL COOK, the Defendant above named, having committed the crime of

[1]The State also charged James with possession of a stolen firearm and two counts of attempted murder with the use of a deadly weapon for attempting to kill Soult and her daughter with a firearm.

03-13917

> CONSPIRACY TO COMMIT MURDER (Felony – NRS 199.480, 200.010, 200.030, 200.070) and SECOND DEGREE MURDER (Felony – NRS 200.010, 200.030, 200.070), on or about the 8th day of April, 2000, within the County of Clark, State of Nevada . . . .
>
> COUNT I – CONSPIRACY TO COMMIT MURDER
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> did then and there wilfully, feloniously, conspire and agree with JAMES COOK to commit the crime of Murder as more fully set forth in Count II.
>
> COUNT II – SECOND DEGREE MURDER
>
> did then and there wilfully, feloniously, without authority of law, kill WALBURGA SOULT without any intent to do so in the commission of an unlawful act to-wit: coercion and/or battery and/or false imprisonment, which in its consequences naturally tends to destroy the life of a human being in the following manner, to-wit: by rendering WALBURGA SOULT vulnerable to attack after restraining and choking her and by leaving her in that condition and stating to younger brother JAMES COOK that "You do it then" referring to the killing of WALBURGA SOULT knowing full well that the said JAMES COOK had the means, the intention and the will to murder WALBURGA SOULT.

Appellant acknowledged in his written plea agreement that by pleading guilty he was admitting the facts to support all elements of the offenses to which he pleaded and was giving up certain rights, including the right to a trial at which the State would have to prove every element of the crimes beyond a reasonable doubt. He further acknowledged that he had discussed the elements of all of the original charges with his attorney

and understood the nature of the charges; that his attorney had thoroughly explained all of these elements and the consequences, rights, and waiver of rights attendant to his guilty plea; that he believed that pleading guilty and accepting the plea bargain was in his best interest; that he entered the agreement voluntarily, after consultation with his attorney; and that his attorney satisfactorily answered all of his questions regarding the agreement and its consequences. Additionally, appellant's counsel certified in the plea agreement that he "fully explained to the Defendant the allegations contained in the charge(s) to which the guilty pleas are being entered."

Appellant entered his guilty pleas in the district court on November 22, 2000. The record of the plea canvass reveals that at the time of the plea, appellant was twenty years old; he was educated through the twelfth grade; he could read, write and understand English; he understood the charges in the second amended information; he freely and voluntarily entered his guilty pleas; and he signed the plea agreement and believed the agreement to be in his best interest. During the canvass, the district court read aloud the charges in the second amended information and asked appellant whether he committed the crimes as stated. Appellant responded affirmatively.

On January 18, 2001, the district court entered its judgment of conviction, sentencing appellant to imprisonment for consecutive terms of 24 to 60 months and 10 to 25 years. The court further ordered appellant to pay $11,221.51 in restitution. Appellant did not directly appeal from his judgment of conviction.

On October 11, 2001, appellant filed a proper person motion to withdraw his guilty plea, asserting various grounds on which his guilty plea was unknowing and involuntary.[2] On December 28, 2001, the district court denied appellant's motion. This appeal followed.

Pursuant to NRS 176.165, a post-conviction motion to withdraw a guilty plea may be granted where there has been a manifest injustice. But a guilty plea will be upheld where the totality of the circumstances shown by the record demonstrates that it was knowingly and voluntarily made.[3] A guilty plea is presumptively valid, and a defendant has the burden of establishing that his plea was not entered knowingly and intelligently and that the denial of his motion to withdraw the plea was a clear abuse of discretion.[4]

Appellant first claims that his guilty plea to second-degree murder must be invalidated because neither the plea canvass nor the written plea agreement demonstrates that he admitted to having the intent to kill necessary to sustain a conviction for that offense. According to appellant, the second amended information erroneously stated the

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[2]Appellant's document was actually titled "Motion to Correct Illegal Conviction Under Plea/or Motion to Withdraw Plea with Request for Evidentiary Hearing."

[3]State v. Freese, 116 Nev. 1097, 1104-06, 13 P.3d 442, 447-48 (2000); Hurd v. State, 114 Nev. 182, 187, 953 P.2d 270, 273 (1998); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986).

[4]Bryant, 102 Nev. at 272, 721 P.2d at 368; Wynn v. State, 96 Nev. 673, 675, 615 P.2d 946, 947 (1980).

elements of second-degree murder by indicating that no intent to kill was necessary. Further, neither the district court's plea canvass nor the plea agreement addressed the statutes defining the crimes of coercion, battery, or false imprisonment,[5] which were alternatively alleged as the predicate unlawful acts supporting the second-degree murder charge. Appellant suggests that if he is not permitted to withdraw his plea, then his conviction must be amended to one for involuntary manslaughter.

However, our review shows that in both the plea canvass and the plea agreement, incorporating the second amended information, appellant admitted to facts sufficient to constitute the crime of second-degree murder. There is no error in the State's assertion of the offense in the second amended information because a specific intent to kill is not required.[6] Moreover, to demonstrate a valid plea, the record need not show a recitation of the statutes defining the unlawful acts which support the second-degree murder charge. "[T]his court is concerned with

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[5]See NRS 200.310 (defining kidnapping); NRS 200.481 (defining battery); NRS 207.190 (defining coercion).

[6]See Sheriff v. Morris, 99 Nev. 109, 113-18, 659 P.2d 852, 856-59 (1983) (recognizing second-degree felony murder rule applicable to homicides committed *without* specific intent to kill in the course of a limited number of life-endangering felonies not included within NRS 200.030(1)(b)), noted in Graham v. State, 116 Nev. 23, 26 n.2, 992 P.2d 255, 257 n.2 (2000); NRS 200.070 (distinguishing involuntary manslaughter from murder by stating that "where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, *the offense is murder*" (emphasis added)).

determining whether a defendant understood the true nature of the charge against him."[7] Here, appellant's understanding of the nature of the offense pleaded to is sufficiently shown by his admission to the facts stated in the second amended information.[8]

Next, appellant claims that his guilty plea to the charge of conspiracy to commit murder must be invalidated because the record does not show that his brother, James, admitted to conspiring with appellant to murder Soult and does not demonstrate that James was canvassed on the matter. This claim lacks merit. Appellant "solemnly admitted in open court that he is in fact guilty of the offense" of conspiracy to commit murder and thereby waived his right to challenge the evidence supporting the charge.[9]

Appellant also challenges the validity of his guilty pleas to both offenses on the basis that the second amended information makes allegations that are impermissibly inconsistent. Appellant argues that

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[7]Bryant, 102 Nev. at 273, 721 P.2d at 368.

[8]See Croft v. State, 99 Nev. 502, 665 P.2d 248 (1983) (recognizing that an affirmative showing that a defendant understands the nature of the offense exists where a defendant adopts as true the court's recitation of facts constituting the offense pleaded to); see also Bryant, 102 Nev. at 273, 721 P.2d at 368.

[9]See Tollett v. Henderson, 411 U.S. 258, 267 (1973) (recognizing that subsequent to a defendant's guilty plea, he is only permitted to attack the validity of the plea and the effectiveness of counsel); Krauss v. State, 116 Nev. 307, 310-11, 998 P.2d 163, 165 (2000) (recognizing that defendant's guilty plea relieves the State of the obligation of proving the substantive offense).

Count II of the information states that appellant coerced James to kill Soult, but Count I alleges that appellant conspired with James to kill Soult. Given this alleged inconsistency, appellant argues that his guilty pleas must be invalidated. We reject this contention.

Appellant misconstrues Count II of the second amended information to identify James as the victim of the coercion. The State plainly alleged that the crime was committed against Soult. There is no inconsistency. Moreover, even if there were an inconsistency as alleged by appellant, there would be no manifest injustice in allowing the convictions to stand. The record shows that appellant gained substantial benefits through his plea bargain. Having accepted those benefits, he may not avoid the consequences of his bargain by attacking the compatibility of the bargained-for charges.[10]

Last, appellant claims that his guilty pleas to both charges are invalid because the record of the plea canvass does not show any inquiry by the district court or any "on the record" advice by counsel regarding the meaning or content of the statutes defining conspiracy to commit murder and second-degree murder.[11] Further, the record does not show any

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[10]See Woods v. State, 114 Nev. 468, 477, 958 P.2d 91, 96-97 (1998) (rejecting argument that guilty plea was invalid and based upon an unlawful plea agreement where defendant "voluntarily entered into the plea agreement and accepted its attendant benefits").

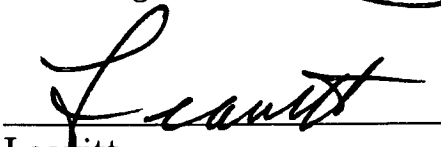
[11]Appellant further admits that his "attorney might [have] reviewed the statu[t]es surrounding the charges which he plead guilty to, yet did not do so on record to establish a viable record to support that [he] was properly informed of the statu[te's] provisions."

inquiry by the court or advice from counsel on the alleged inconsistency between the charges of conspiracy and second-degree murder. We have already rejected appellant's contention related to inconsistency between the charges. Also, appellant has failed to demonstrate that his guilty pleas were the result of any ineffective assistance of counsel.[12] Finally, we conclude that the totality of circumstances here shows that appellant had a sufficient understanding of the true nature of both of the offenses to which he pleaded guilty and that his guilty pleas were knowingly and voluntarily entered.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[13] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing



_____, J.
Leavitt

_____, J.
Becker

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[12]See generally Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

[13]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Joseph T. Bonaventure, District Judge
Daniel Cook
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk